

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 1697 of 2001.

(Old No. 62 of 1997)

Munna son of late Ram Prasad, resident of Ward No.6, P.S.
Khatima, district Udham Singh Nagar.

...Appellant.

Versus

State of Uttaranchal.

...Respondent

Sri D.C.S. Rawat, learned Amicus Curiae for the appellant.

Sri Sudhir Chaudhary and Sri Manoj Chandra, learned A.G.A. for the State.

HON'BLE DHARAM VEER, J.

1. This appeal has been preferred by the appellant Munna against the judgment and order dated 19.03.1997 passed by Sri N.C.Harit, Special Judge/Additional Sessions Judge, Nainital in Special Trial No.136 of 1995 whereby appellant was convicted under section 8/20 of Narcotic Drugs & Psychotropic Substances Act, 1985 and was sentenced to rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/-. In default of payment of fine, the appellant would undergo two years' rigorous imprisonment.

2. Briefly stated the prosecution story is that on 27.06.1995 S.I. Harbans Singh alongwith head constable Braj Nandan Dube and constable Arjun Singh was on patrolling duty in connection with investigation of case crime No.195 of 1995, under section 324/504 IPC. When the police party reached near railway crossing, Khatima within P.S.Khatima, they saw one person coming on foot. On seeing the police personnel, the said person tried to run away. On seeing so, the police party had suspicion on the said person. The police immediately intercepted the appellant at about 9 a.m. at a distance of 100 steps from 'Tiraha' leading to Avas Vikas and asked him as to why he was

running. The apprehended person stated his name as Munna son of Ram Prasad, resident of Ward No.6-Khatima, P.S. Khatima, district Udham Singh Nagar and he said that he had 200 grams of Charas in his possession so he was running. On being asked him whether he wanted to be searched before a Gazetted officer or a Magistrate, the appellant stated that search may be taken by the raiding party themselves. The police party themselves took the search of the appellant. On conducting the search of the appellant, they found the charas which was kept in a plastic bag. The said contraband was taken into possession. The appellant was arrested on the spot and the said charas was taken into custody by the police. The recovery memo was prepared which is Ext.Ka.1 and a sample of charas was taken for chemical examination. The said charas was sent to the chemical examiner who has reported that the contraband is the charas. The investigation was taken by S.I. Om Pal Singh. After the investigation, he submitted the charge sheet (Ext.Ka.6). The trial court charged the appellant under Section 8/20 of Narcotic Drugs & Psychotropic Substances Act, 1985. The appellant denied the charge leveled against him and claimed the trial.

3. In order to prove the case, the prosecution has produced S.I. Harbans Singh (P.W.1), Head constable Braj Nandan (PW 2) and S.I. Om Pal Singh (PW 3).

4. The statement of the accused was recorded under section 313 Cr.P.C. and the accused denied the entire prosecution evidence and stated that he has been falsely implicated in this case.

5. After appraisal of the material on record, the learned Trial Court found the appellant guilty under section 8/20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and convicted and sentenced the appellant as mentioned above.

6. I have heard learned counsel for both the parties and perused the entire record of the case.

7. The learned Amicus Curiae assailed the conclusions of the learned trial Judge and submitted that mandatory provision of Section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 has not been complied with because the appellant had been searched first of all and thereafter he was informed of his right to be searched before a Gazetted Officer or a Magistrate. To support the contention, attention was drawn to the evidence of P.W.3 Om Pal Singh and P.W.1 and P.W.2 as well as the memo of arrest and seizure. No doubt, the appellant-accused was informed of his right that if he wanted, he could be searched before the Gazetted officer or the Magistrate after his search has already been made, but it happened so because there was no prior information with the police party that appellant-accused would be carrying contraband Charas at the place of the occurrence. The interception of the appellant-accused on suspicion was unexpected and per chance. In this manner, the appellant can not be given benefit of section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 on the basis of the abovenoted facts and circumstances.

8. The learned A.G.A. has referred Section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 which reads as under:

“50. conditions under which search of persons shall be conducted –(1) when any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section,43 he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted office of any of the departments mentioned in section 42 or to the nearest magistrate.

(2 if such requisition is made, the officer may detain the person until he can bring him before the Gazetted officer or the magistrate referred to in subsection (1)

(3)the Gazetted officer or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) no female shall be searched by anyone excepting a female.”

9. The learned A.G.A has relied upon a case law reported in **(2004) 3 Supreme Court Cases 453- State of Punjab Vs Makhan Chand** and the Apex Court has observed in para 7, “apart from the aforesaid question, we are also of the view that Section 50 of the Act would not apply to a situation where the search undertaken is not of the person of the accused but of something carried in his hand.” The learned A.G.A. has also relied upon a case law reported in **(2005) 4 Supreme Court Cases- 350 State of U.P. Vs Pawan Kumar** and the Apex Court has held in para 27, “in view of the discussion made earlier, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag which was being carried by the accused.” In the present case, the appellant was in possession of 200 grams charas which was recovered from a plastic bag.

10. It view of the aforesaid decisions of the Apex Court the appellant is not entitled to take the benefit of Section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

11. It was further submitted on behalf of the appellant that no public witness of the arrest and seizure was taken and this aspect of the matter also creates grave doubt in the prosecution version and the evidence of the witnesses. This submit also

carry no force because the witnesses of the fact P.W.1 and PW 2 categorically stated that despite efforts, no public witness could be procured at that time and there is nothing in their evidence as may, in any way, assail their reliability. The evidence of witnesses PW 1 S.I. Harbans Singh, PW 2 Head constable Braj Nandan and PW 3 S.I. Om pal Singh proved beyond doubt, the fact of recovery of 200 grams of charas from the possession of the appellant at the time of this arrest at 9:00 a.m. on 27.06.1995 at a distance of 100 steps from the Tiraha leading to Avas-Vikas.

12. For the above reasons and discussion I come to the definite conclusion that the charge against the appellant-accused was rightly found to have been proved beyond doubt by the learned Special Judge/ Addl.Sessions Judge and there are no cogent grounds to interfere with the Judgment of conviction of the appellant under Section 8/20 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

13. In view of the above discussion, I am of the view that the learned trial court has rightly found the appellant guilty under section 8/20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and no interference need to be required by this Court. The conviction and sentence awarded by the trial court are maintained. The appeal lacks merit and is dismissed.

14. Let a copy of this judgment alongwith the record of the case be sent to the trial court for needful compliance under intimation to this Court within four months.

Dated: 08.12.2006.
Negi.

(Dharam Veer, J)